

UNAPPROVED MINUTES
COUNCIL MEETING
September 27, 2010

A regular meeting of the Council of the City of Salem, Virginia, was held in Council Chambers, City Hall, 114 North Broad Street, on September 27, 2010, at 7:30 p.m., there being present the following members of said Council, to wit: Byron Randolph Foley, Jane W. Johnson, William D. Jones, and Lisa D. Garst (John C. Givens – absent); with Byron Randolph Foley, Mayor, presiding; together with Kevin S. Boggess, City Manager; Krystal M. Coleman, Deputy Clerk of Council; Frank P. Turk, Director of Finance; Melinda J. Payne, Director of Planning and Economic Development; Charles E. Van Allman, Jr., City Engineer; Mike Stevens, Communications Director; and Stephen M. Yost, City Attorney, and the following business was transacted:

Mayor Foley extended wishes to Vice Mayor Givens for a speedy recovery from his recent surgery.

The September 13, 2010, work session and regular meeting minutes were approved as written.

The report by the City Manager of the City's activities for August 2010 was received and ordered filed.

Mayor Foley reported that this date and time had been set to hold a public hearing to consider the request of Salem Investment, L.C., property owner, and 110 E. 1st Street, LLC, contract purchaser, for the issuance of a Special Exception Permit to allow general offices and medical offices/clinics on the property located at 110 East First Street (Tax Map #121-10-3); notice of such public hearing was published in the September 8 and 15, 2010, issues of The Roanoke Times, a newspaper having general circulation in the City of Salem; and

WHEREAS, the Planning Commission at its regular meeting held September 15, 2010, recommended approval of said request; and

WHEREAS, staff noted the following: the subject property consists of one parcel, located on the south side of East First Street, west of Colorado Street; the property is approximately 75 feet wide and 60 feet deep; it is currently occupied by a 2,337 square foot general office building; this request is for a Special Exception Permit to allow both general offices and medical offices/clinics in RMF; the existing office building was constructed in 1957; at that time, professional offices were allowed by right in the R-3 zoning under the

ITEM 1 SPECIAL EXCEPTION PERMIT APPROVED TO ALLOW GENERAL OFFICES AND MEDICAL OFFICES/ CLINICS ON THE PROPERTY LOCATED AT 110 EAST FIRST STREET (T/M 121-10-3)
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previous zoning ordinance; the Special Exception Permit will bring the zoning into conformance with the existing general office use, but medical offices do not currently exist at the site; and this property is partially located within the 100-year and 500-year flood zone; and

WHEREAS, the Director of Planning stated that the request is being submitted by City Attorney Steve Yost and Assistant City Attorney Bill Maxwell because they are being evicted from the building where their office is currently located; she stated that the request is for a Special Exception Permit to allow their office to be located in the building, as well as for a medical office to be able to be located in the building also; she further stated that the property was originally zoned to allow a law or medical office, but when the City's current Comprehensive Plan was adopted, the zoning of the property was changed; and

WHEREAS, the City Attorney stated that the property is currently zoned RMF, although there has been an office use on the property since the building was built in 1957; he stated that Salem Financial was located on the property for years, and he believes a medical office was located on the property at one point also; he stated that they are not asking for the property to be rezoned, although the property is grandfathered to be used as an office, they are asking for a Special Exception Permit because currently if the building happened to burn down, etc. the grandfathered rights would be lost; and

WHEREAS, Stella Reinhard, 213 North Broad Street, appeared before the Council; she stated that she looked at the property and she supports the Special Exception Permit request; she questioned when the property was down-zoned in the previous Comprehensive Plan, why was it down-zoned; and

WHEREAS, the Director of Planning stated that she believes it was a situation when the property was looked at, it was decided that it was a neighborhood fit in the area; she stated that the use was changed and made the property non-conforming, which was not realized until another person came forward to have another office placed on the property; and

WHEREAS, Ms. Reinhard stated that in changing the property to possibly encourage the health of the neighborhood in the future in the last Comprehensive Plan, it made the building not able to perform as it was intended when it was built; and

WHEREAS, the Director of Planning stated that happened in a few places throughout the City, not intentionally, but it happened when the Comprehensive Plan was being updated; and

WHEREAS, Ms. Reinhard stated that she feels a Special Exception Permit should be issued under Residential Multi-Family District zoning; she noted that recently when requests were made on Union Street and Roanoke-Boulevard originally, as she understands it, by one property owner for a Special Exception Permit on property zoned Residential Multi-Family District, the City asked the property owner to rezone the property to Residential Business District and asked the nearby neighbors to rezone their property to RB as well; she stated that First Street is not so far away from Roanoke-Boulevard and has as much ability to be seen as a RB district as Roanoke-Boulevard and Union; she stated that she is trying to understand the overall strategy and questioned if there is a strategy; she stated that she prefers a Special Exception Permit be issued for one property rather than rezone several properties; and

WHEREAS, Mayor Foley stated that there is no strategy, no conspiracy to do anything; he stated that Council is trying to use the property as the best fit for its use; and

WHEREAS, Ms. Reinhard clarified that she did not use the word conspiracy; and

WHEREAS, Mayor Foley apologized for using the word conspiracy; he stated that there is no strategy; he stated that the property owners in different cases have asked to use their property for certain reasons that need other zoning for the uses and Council looked at the request and deemed it appropriate; he noted that Roanoke-Boulevard is not being addressed at this meeting, only the property on First Street is being addressed; and

WHEREAS, Ms. Reinhard stated that she is trying to figure out why in two other cases when the original request was made for a Special Exception Permit in Residential Multi-Family District zoning, which she supports, why was a “push” made for a block of properties to be rezoned to RB, but was not done with this request on First Street; and

WHEREAS, Mayor Foley stated that it is understanding that the use being requested for the property on the Boulevard could not be used in Residential Multi-Family District zoning; and

WHEREAS, Ms. Reinhard stated that it was her understanding that the business could be located on the property on the Boulevard if a Special Exception Permit was approved; and

WHEREAS, the City Manager stated that a general office can be granted in RMF Zoning by Special Exception Permit; the request by property owners on Boulevard and Union Street were for Residential Business District Zoning and when the adjacent properties in these areas were reviewed it became apparent that the adjoining properties were suited more toward the RB Zoning classification; First Street is structured differently in that it currently has two commercial properties requiring only a Special Exception Permit with surrounding residential leading onto another street; he stated that the properties on Union Street and Roanoke-Boulevard that were considered for Residential Business District rezoning already had some component of a business in them and in addition to a request to rezone it provided an opportunity to correct some non-conforming use problems on both; he stated that there is not a non-conforming use issue on First Street; he further stated that there is a significant difference between the situations that occurred on Union Streets and Roanoke-Boulevard than what is being requested on First Street; he stated that he would be happy to discuss the issues with Ms. Reinhard at any time; and

WHEREAS, Ms. Reinhard stated that she appreciates the City Manager's response; she stated that she was under the impression that the requests for rezoning originally made on Union Street and Roanoke-Boulevard were originally made for Residential Multi-Family District, and not for Residential Business District; and

WHEREAS, the City Manager stated that he does not recall if that is correct or not; and

WHEREAS, Ms. Reinhard questioned if anyone else recalls what the original request was for; and

WHEREAS, it was noted that the initial requests do not come to Council, they go to staff with the application and then the request goes to the Planning Commission; and

WHEREAS, Ms. Reinhard stated that she remembered Mr. Padgett stating at one of the meetings that his original request was for Residential Multi-Family District zoning once he realized that the zoning on his property had been changed to Residential Single Family zoning; and

WHEREAS, the City Manager stated that it was the opinion of City Staff that Residential Business District zoning was a better fit in both of the rezoning requests on Union Street and Roanoke-Boulevard because of the adjoining uses on the properties adjacent to where the requests for rezoning were being made;

and

WHEREAS, Ms. Reinhard stated that she has visited the three areas (Union Street, Roanoke-Boulevard, and First Street) and feels that Union Street and Roanoke-Boulevard are both residential areas; there is only one property on Roanoke-Boulevard that looks commercial in the middle of residential properties; she asked that Council let residents know what the strategy is, if there is a strategy, so that residents can understand Council's decisions concerning business uses in the middle of residential areas; she stated that she would like to discuss this further in the office, and would like to have a public conversation as well; and

WHEREAS, no other person(s) appeared related to said request;

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN GARST, AND DULY CARRIED, a Special Exception Permit to allow general offices and medical offices/clinics on the property located at 110 East First Street (Tax Map #121-10-3) was hereby approved – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Mayor Foley reported that this date and time had been set to hold a public hearing and consider adopting Resolution 1170 ratifying the issuance of \$4,500,000 of Public Improvement Bonds; notice of such public hearing was published in the September 11 and 18, 2010, issues of The Roanoke Times, a newspaper having general circulation in the City of Salem; and

WHEREAS, it was noted that Council has to reconsider this resolution due to a problem with advertising; the notice was supposed to be advertised for two consecutive weeks, but was not; the mistake has been corrected and Resolution 1170 reaffirms what Council approved at an earlier date; and

WHEREAS, Wayne Adkins, 1505 Ashley Drive, appeared before Council; he stated that he does not want to speak against the public improvement bonds; he stated that the advertisement was not clear about the bonds, but he has spoken with the Director of Finance and has a better understanding of what is being done; he stated that his concern is that if there was a significant bond referendum and large dollars could be used in schools, he feels that schools are more important than the civic center; he wants to make sure that the money being spent is not being spent inappropriately or untimely; and

<p>ITEM 2 RESOLUTION 1170 APPROVED RATIFYING THE ISSUANCE OF \$4,500,000 OF PUBLIC IMPROVEMENT BONDS</p>
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WHEREAS, Councilman Jones thanked Mr. Adkins and Ms. Reinhard for being present at the meeting; he stated that the monies being invested in the Salem Civic Center are being used for the HVAC system; the current HVAC system in place at the Civic Center dates, for the most part, back to the original system that was in place in the 1960s; he discussed the proposed agreement with Siemens Building Technologies to perform the work, etc.; and

WHEREAS, the Director of Finance noted that the public improvement bonds being considered addresses the Sewer Bond Issue being done under the Consent Order with the Virginia Resources Authority through the Department of Environmental Quality to update sewer lines in the City; he stated that the item he discussed with Mr. Adkins regarding the Civic Center is a different item to be discussed later on the agenda; and

WHEREAS, Mr. Adkins stated that he thought the bond issue was for the work to be done at the Civic Center; and

WHEREAS, no other person(s) appeared related to said request;

ON MOTION MADE BY COUNCILWOMAN GARST, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, Resolution 1170 ratifying the issuance of \$4,500,000 of Public Improvement Bonds was hereby approved:

(HERE SET OUT RESOLUTION 1170)

– the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Mayor Foley noted that he would like for public notices to be able to be published via the web or internet instead of having to be published in a newspaper; he noted that this is the second time in the last year that something has been advertised incorrectly.

Mayor Foley requested that Council consider awarding contract for the purchase of a new ambulance for the Fire Department; and

WHEREAS, Councilman Jones, Vice Chairman of Council's Audit-Finance Committee, stated that the committee reviewing the accepted bids for an EMS ambulance for the Fire Department is not ready to make a recommendation to the Audit-Finance Committee at this time; therefore, the Committee recommends that this item be continued until the October 11, 2010, meeting;

ITEM 3
CONTINUED TO
OCTOBER 11, 2010,
MEETING

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, the request to award a contract for the purchase of a new ambulance for the Fire Department is hereby continued until the October 11, 2010, meeting – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Mayor Foley requested that Council consider awarding contract for physical improvements to the Salem Civic Center; and

WHEREAS, Councilman Jones, Vice Chairman of Council's Audit-Finance Committee, stated that the City has been looking to improve the heating, air conditioning, and lighting at the Salem Civic Center for some time now; some of the current systems have been in place since the Civic Center opened in 1967; over the years, the energy efficiency of the equipment has deteriorated significantly and its reliability has become suspect; with this in mind, the City entered into a procurement process developed by the Commonwealth of Virginia; the City selected Siemens Building Technologies to be its partner in this project; studies of the building, its energy use, age of the equipment, the ability to maintain it, the ongoing needs of the Civic Center and various options were reviewed; this project was discussed as part of an upcoming bond issue totaling \$6,500,000; numerous meetings have been held between Siemens staff and City staff to hammer out a contract that is acceptable to the City; an agreement is imminent; however, time is becoming an issue regarding the cost of the project and completion of the work when facilities are available; the Committee recommends approval of a contract with Siemens Building Technologies in the amount of \$4,222,339; this contract will be subject to final review and approval by City staff along with contractual approval of the City Attorney and further proper City Officials be authorized to execute this contract; and

WHEREAS, the City Manager stated that because of the nature of the operation of the Civic Center there are certain windows of times, generally during the winter, particularly the month of January that work is being planned, that is why it is requested that Council authorize staff to have the ability to execute the contract upon final approval so that the equipment can be ordered through Siemens; he stated that Glenn McDearmon with Siemens is present at the meeting to answer any questions; he stated that there is a 10-week lead time on certain pieces of equipment to be ordered, which is the need for Council's approval to authorize City Staff to execute the contract once a final contract has been agreed upon; he further stated that Siemens has been very patient with the City throughout the process, which has been a learning process;

ITEM 4
CONTRACT
AWARDED TO
SIEMENS BUILDING
TECHNOLOGIES IN
THE AMOUNT OF
\$4,222,339
SUBJECT TO FINAL
REVIEW AND
APPROVAL BY CITY
STAFF AND
CONTRACTUAL
APPROVAL OF THE
CITY ATTORNEY;
PROPER CITY
OFFICIALS
AUTHORIZED TO
EXECUTE THE
CONTRACT

he discussed the various iterations for the project, life expectancy of the equipment to be placed in the Civic Center, etc.; he further addressed Mr. Adkins' question—he stated that a few years ago a very large rehabilitation project to the Civic Center was discussed in the neighborhood of \$20 million; he stated that the \$4.5 million project being proposed will take care of what currently needs to be done at the Civic Center and will allow the Civic Center to be placed lower on the priority list of projects so that other needed projects can be taken care of; he further stated that the equipment being placed in the Civic Center will be utilized for the next 30 years and will be used regardless of any rehabilitation projects to be done to the Civic Center in the future; and

WHEREAS, Mayor Foley questioned if the equipment to be placed in the Civic Center will last as long as the equipment currently in place; and

WHEREAS, Glenn McDearmon appeared before Council and stated that a substantial infrastructure will be placed in the Civic Center and will last the Civic Center quite a while; he stated that the equipment is made much more substantial now than in the past; he stated that Siemens has been very pleased with the negotiations to date and complimented the staff at the Civic Center; and

WHEREAS, Councilwoman Garst questioned if the proposed contract is a performance contract; and

WHEREAS, the City Manager stated that the type of procurement is performance based and there is a calculation that shows the energy savings as part of the payback to make the project affordable; he stated that the City has the option to have a guarantee written into the contract, but there is an expense to the City associated with the verification process; he stated that the cost to do the measurement and verification would be between \$7,000 and \$10,000 a year to prove the amount of money saved; he stated that staff feels that the return on investment that has been shown to date does not warrant the need for the verification process or the expense that goes along with the process; he feels that the city can measure the savings on its own through actual consumption usage; and

WHEREAS, the Director of Finance stated that staff feels that over time the amount spent in the different utility accounts will go down, and the savings will help go toward the debt service without having to pay to have someone verify the savings; and

WHEREAS, Mayor Foley questioned the type of warranty associated with the equipment (parts and labor); and

WHEREAS, Mr. McDearmon stated that the standard warranty for installation and labor is one year, but an extended warranty is purchased on the equipment which transfers to the Civic Center; he stated that an extended warranty on the equipment is usually for five years and will transfer to the Civic Center; he further stated that Siemens guarantees its work for one year (labor, parts, material); and

WHEREAS, Councilman Jones questioned the capacity to be placed in the Civic Center—how does it compare, or can it be compared; and

WHEREAS, Mr. McDearmon stated that the efficiency of the current equipment in place at the Civic Center has gone down dramatically due to trying to add capacity into the system; he stated that will be cleaned up and more capacity will be added into the system so that the facility will be able to work as it was originally designed to work; he stated that the Civic Center staff has done an excellent job of holding the equipment together over the years, but the new design will have more efficiency, and will have more air into the system to be able to take care of the fumes and different events that take place at the Civic Center; and

WHEREAS, it was noted that the City has the right to change its mind up until the contract is signed;

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, the contract for physical improvements to the Salem Civic Center with Siemens Building Technologies in the amount of \$4,222,339 was hereby approved subject to final review and approval by City staff along with contractual approval of the City Attorney and proper City officials are hereby authorized to execute the contract – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Mayor Foley requested that Council consider an ordinance on second reading amending Part II, Chapter 22, Sections 22-46.1 and 22-52 of The Code of the City of Salem, Virginia, pertaining to License Due Dates and Penalties; ordinance passed on first reading at September 13, 2010, meeting;

ITEM 5
ORDINANCE
ADOPTED
AMENDING PART
II, CHAPTER 22,
SECTIONS 22-46.1
AND 22-52 OF THE
CODE OF THE CITY
OF SALEM,
VIRGINIA,
PERTAINING TO
LICENSE DUE
DATES AND
PENALTIES

ON MOTION MADE BY COUNCILWOMAN JOHNSON, SECONDED BY COUNCILMAN JONES, AND DULY CARRIED, an ordinance amending Part II, Chapter 22, Sections 22-46.1 and 22-52 of The Code of the City of Salem, Virginia, pertaining to License Due Dates and Penalties was hereby adopted:

(HERE SET OUT ORDINANCE)

– the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

ITEMS1
CLOSED SESSION
FOR
CONSULTATION
WITH LEGAL
COUNSEL
REGARDING
SPECIFIC LEGAL
MATTERS
REQUIRING THE
PROVISION OF
LEGAL ADVICE

Mayor Foley requested that Council consider the request of the City Manager to hold a closed session pursuant to provisions of Sections 2.2-3711 A (7) of the 1950 Code of Virginia, as amended, for consultation with legal counsel regarding specific legal matters requiring the provision of legal advice;

ON MOTION MADE BY COUNCILWOMAN GARST, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, in accordance with Section 2.2-3711 A. of the Code of Virginia, 1950 as amended to date, Council convened to Closed Session at 7:55 p.m. for consultation with legal counsel regarding specific legal matters requiring the provision of legal advice, which is authorized by Section 2.2-3711 A. (7) of the Code of Virginia, 1950 as amended to date -- the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Upon reconvening at 8:35 p.m.;

ON MOTION MADE BY COUNCILWOMAN GARST, SECONDED BY COUNCILMAN JONES, AND DULY CARRIED, in accordance with Section 2.2-3712 D. of the Code of Virginia, 1950 as amended to date, Council hereby certifies that in Closed Session only items lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such items identified in the motion by which the Closed Session was convened were heard, discussed, or considered by the Council -- the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

There being no further business to come before the Council, the same on motion adjourned at 8:38 p.m.